

1 SCOTT M. KANE, #11592
2 STEWART R. SMITH, #22746
3 Lacy Kane, P.S.
4 300 Eastmont Avenue
5 East Wenatchee, WA 98802
6 (509) 884-9541; fax (509) 884-4805
7 Attorney for Plaintiffs

THE HONORABLE SALVADOR MENDOZA, JR.

8
9
10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 RANDY MCKEE and SHEILA
13 MCKEE, husband and wife,

14 Plaintiffs, No. CV-14-00204-SMJ

15 v. SECOND AMENDED
16 CHERAN COUNTY, a County existing
17 under Washington law, and CHERAN
18 COUNTY SHERIFF'S OFFICE, a
19 subdivision of Chelan County, and
20 CHERAN COUNTY FIRE DISTRICT
NO. 6, a fire district existing under
Washington law,

21 Defendants.

22
23 Plaintiffs Randy McKee and Sheila McKee, husband and wife, by and
24 through their attorney, Scott M. Kane of LACY KANE, P.S., for causes of action
25
26



1 against the Defendants, state and allege:

2 **I. PARTIES, JURISDICTION, AND VENUE**

3 1.1 Plaintiffs. At all material times, Plaintiffs Randy McKee and
4 Sheila McKee (“the McKees”) resided in Wenatchee, Chelan County, Washington.

5 1.2 Defendant Chelan County. Defendant Chelan County is a
6 municipal entity existing under Washington Law.

7 1.3 Defendant Chelan County Sheriff's Office. Defendant Chelan
8 County Sheriff's office is a subdivision of Chelan County.

9 1.4 Defendant Chelan County Fire District No. 6: Defendant
10 Chelan County Fire District No. 6 is a duly organized Fire District existing under
11 Washington law, located in Chelan County, Washington.

12 1.5 All acts or omissions of Chelan County, Chelan County
13 Sheriff's Office, and Chelan County Fire District No. 6, resulting in damage to the
14 property of the McKees, took place in Chelan County, Washington.

15 1.6 The acts of individual deputies of the Sheriff's Office were
16 within the course and scope of their employment and are imputed to Chelan
17 County under the Doctrine of Respondeat Superior.

18 1.7 The acts of individual employees of Chelan County Fire
19 District No. 6 were within the course of their employment and are imputed to



Chelan County Fire District No. 6 under the Doctrine of Respondeat Superior.

1.8 Jurisdiction and venue are proper under RCW 36.01.050.

II. BACKGROUND

2.1 On or about July 30, 2010, Randy McKee was denied access to the McKees' land, in Nahahum Canyon, Chelan County, by the Chelan County Sheriff's Office and Chelan County Fire District No. 6, due to a fire.

2.2 The McKees owned equipment, including excavators, that would have been used for fire suppression activities on their land and would have prevented damage to the land and personal property from fire.

2.3 The McKees intended to use their equipment to prevent and suppress fire on their land.

2.4 The denial of access prevented the McKees from protecting their property from fire.

2.5 Because access was denied, the McKees suffered fire damage, including the loss of personal property stored on the land to be used for the McKees' construction of a new residence.

2.6 Other individuals who were landowners in Nahahum Canyon
were allowed access to their property during the fire for the protection of their
land, structures, and property.



1 2.7 Had the McKees been allowed access to their property, damage
 2 to the property could have been prevented. The time period passing between when
 3 the McKees first requested access and the time their real and personal property
 4 burned exceeded five (5) hours.

5 2.8 The McKees were denied access to their real and personal
 6 property without legal authorization by all defendants. As a consequence, the
 7 McKees suffered significant damage, as will be shown at trial.

8 **III. FIRST CAUSE OF ACTION:**

9 **VIOLATION OF RCW 47.48, RCW 36.28A, AND NEGLIGENCE**

10 3.1 The McKees restate and re-allege all prior paragraphs.

11 3.2 Washington law requires owners be allowed access to land they
 12 own to conduct fire prevention in spite of general closures, and allowing the
 13 McKees access to their property would have prevented the damage to the land and
 14 personal property destroyed by the fire.

15 3.3 The Defendants had a duty to comply with provisions of RCW
 16 47.48 and RCW 36.28A, requiring that law enforcement allow the McKees access
 17 to their property owned within the county. The McKees possessed equipment that
 18 could have been used for fire prevention or suppression activities.

19 3.4 At all times relevant, the McKees satisfied the requirements



mandating they be allowed access to their property to conduct fire prevention and suppression.

3.5 The Defendants, individually and collectively, breached their duties to the McKees by denying them access to their land for fire prevention and suppression activities, both negligently and in violation of statute, resulting in loss of the McKees' property.

3.6 As a direct and proximate result of the Defendants' negligence, the McKees sustained damages, including but not limited to out-of-pocket expenses, consequential damages, actual costs and attorney fees in prosecuting this action, and prejudgment interest on liquidated sums owed by the Defendants, all in an amount to be proven at trial.

IV. SECOND CAUSE OF ACTION:

CONSTITUTIONAL CIVIL RIGHTS VIOLATIONS (42 U.S.C. § 1983)

4.1 The McKees restate and re-allege all prior paragraphs.

4.2 While acting under color of law, Chelan County and Chelan
County Fire District No. 6, through the acts of the Sheriff Department and Chelan
County Fire District No. 6 employees, deprived the McKees of civil rights and
privileges provided under federal law and the Constitution in violation of 42
U.S.C. § 1983.



4.3 The McKees were deprived of their rights to life, liberty, and property without due process of law.

4.4 The Defendants' constitutional violations and selective enforcement of the law constitutes a denial of due process and equal protection under the State and Federal Constitutions. The McKees were denied rights of equal protection.

4.5 These constitutional violations entitle the McKees to an award of damages including attorneys fees.

4.6 The Defendants failed to adequately train and supervise
deputies of the Sheriff's Department and employees of Chelan County Fire
District No. 6 of their statutory obligations and the procedures regarding the rights
of land owners and occupiers to protect their land and personal property from fire.
The conduct of the Defendants shows deliberate indifference to proper law
enforcement policy and procedure.

4.7 As a direct and proximate result of these civil rights violations, the McKees have suffered damages in an amount to be proven at trial.

DEMAND FOR RELIEF

The McKees request that judgment be entered against the Defendants as follows:



1. Awarding damages for out-of-pocket expenses, consequential damages, actual costs and attorney fees in prosecuting this action pursuant to 42 U.S.C. § 1988, and prejudgment interest and other losses in an amount to be proven at the time of trial;

2. Awarding past and future general damages for pain, suffering, mental anguish, and other losses in an amount to be proven at the time of trial;

3. Punitive damages as allowed by 42 U.S.C. § 1983 or other applicable law; and

4. Awarding the McKees any further relief this Court may deem just and proper.

DATED this 1st day of August, 2014.

LACY KANE, P.S.

s/ Scott M. Kane
SCOTT M. KANE, WSBA # 11592
Attorney for Plaintiffs
Lacy Kane, P.S.
300 Eastmont Ave.
East Wenatchee, WA 98802
Telephone: (509) 884-9541
Fax: (509) 884-4805
Email: scott@lacykane.com

SECOND AMENDED COMPLAINT - 7
c9 \McKee-r.ml\pleadings\amended.complaint.2

LACY KANE, P.S.
300 Eastmont Avenue
East Wenatchee, WA 98802
(509) 884-9541 ◆ Fax: (509) 884-4805



1
2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that on August 1, 2014, I electronically filed the
5 foregoing with the Clerk of the Court using the CM/ECF System which will send
6 notification of such filing to the following:
7

8 ROBERT W. NAVASKY
9 Forsberg & Umlauf, P.S.
10 Attorneys at Law
11 One N. Tacoma Ave., Suite 200
12 Tacoma, WA 98403

13 CHRISTOPHER J. KERLEY
14 Evans, Craven & Lackie, P.S.
15 818 W. Riverside Ave., Suite 250
16 Spokane, WA 99201

17 LACY KANE, P.S.

18 BY s/ Scott M. Kane
19 SCOTT M. KANE, WSBA # 11592
20 Attorney for Plaintiffs
21 Lacy Kane, P.S.
22 300 Eastmont
23 East Wenatchee, WA 98802
24 Telephone: (509) 884-9541
25 Fax: (509) 884-4805
26 Email: scott@lacykane.com

